



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for authorization to keep all or part of the security deposit, and to recover the filing fee.

The tenant, a support for the tenant, two agents for the landlord (the “agents”), and a witness for the landlord appeared at the teleconference hearing and gave affirmed testimony. The parties had the hearing process explained to them and during the hearing the parties were given the opportunity to provide their evidence orally and refer to any relevant documentary evidence submitted in accordance with the rules of procedure. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed receiving the documentary evidence from the landlord and that she had the opportunity to review the landlord’s documentary evidence prior to the hearing. The tenant confirmed that she did not submit documentary evidence prior to the hearing. I find the tenant was served in accordance with the *Act*.

### Preliminary and Procedural Matter

At the end of the hearing, an agent for the landlord requested to withdraw the landlord’s claim for damages, which was denied, as the merits of the landlord’s application had already been heard. The request of the agent was denied as I find that permitting the landlord to withdraw the damages portion of their claim would have been prejudicial to the tenant given that I had already heard the merits of the landlord’s application.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

### Background and Evidence

A copy of the written tenancy agreement was submitted in evidence. A periodic, month to month tenancy agreement began on October 1, 1995. The parties agree that the tenancy ended on February 27, 2014, when the tenant vacated the rental unit. The original monthly rent was \$480.00 due on the first day of each month, and was increased several times during the tenancy to \$709.00 per month by the end of the tenancy. The tenant paid a security deposit of \$240.00 at the start of the tenancy, which was accrued \$42.26 in interest since the start of the tenancy, resulting in a security deposit total of \$282.26, which the landlord continues to hold.

During the hearing, the landlord reduced their monetary claim. I find that a reduction in the landlord's monetary claim does not prejudice the tenant and was permitted as a result. The landlord reduced their monetary claim from the original amount being claimed of \$4,459.2, to the following described below:

Item 1. Unpaid March 2014 rent	\$709.00
Item 2. Cleaning costs	\$1,890.00
Item 3. Interior repairs	\$1,407.00
Item 4. Exterior repairs	\$52.50
<b>TOTAL</b>	<b>\$4,058.50</b>

### Settlement Agreement

During the hearing, the parties agreed to mutually settle on some of the items being claimed by the landlord. The items which have been agreed upon by the parties have been organized into a table below for ease of reference. As a result, the corresponding item numbers will not be included in the analysis section of this decision as all matters which form part of the settlement agreement were agreed upon by the parties, pursuant to section 63 of the *Act*, and form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

<b>Settlement Agreement Item Description</b>	<b>Agreed upon compensation to landlord by tenant</b>
Item 1 – Unpaid March 2014 rent	\$709.00
Portion of item 3 – Damage to window	\$150.00
<b>TOTAL</b>	<b>\$859.00</b>

Regarding item 2, the landlord has claimed \$1,890.00 for cleaning costs. The agent referred to a condition inspection report which the tenant confirmed signing. The landlord called witness “NO”. Witness “NO” testified that she wrote the March 5, 2014 document submitted in evidence by the landlord and that her letter accurately represented how the rental unit looked at the end of the tenancy. The witness also stated that there was no attempt to clean the rental unit at the end of the tenancy. The tenant decided not to cross-examine witness “NO” and did not ask any questions of the witness as a result. The landlord stated during the hearing that he was reducing this portion of the landlord’s claim to \$1,800.00 as that was the amount listed in the landlord’s application for dispute resolution. Submitted in evidence is a receipt for \$2,016.00 including tax, comprised of 64 hours of cleaning at \$30.00 per hour, and includes the address of the rental unit, and is dated March 21, 2014.

The tenant stated that she was told by an agent for the landlord that she did not need to clean the rental unit at the end of the tenancy as the rental unit was going to be renovated. The agent for the landlord denied saying that to the tenant and stated that the rental unit has not been renovated and has not been rented to a new tenant since the tenant vacated the rental unit.

In support of this portion of their claim, the landlord referred to the colour photos submitted in their documentary evidence. The tenant agreed during the hearing that the photos showed the condition of the rental unit at the end of the tenancy.

Regarding item 3, the landlord has claimed \$1,407.00 for interior repairs; however, the actual total is \$1,340.00. The landlord has claimed the following amounts for interior repairs, which have been listed as item #3 sub-items for ease of reference:

<b>Item #3 Sub-Item Description</b>	<b>Amount Claimed</b>
Sub-item 1. Window repair	\$150.00 (resolved by mutual agreement as described above)

Sub-item 2. Doors	\$40.00
Sub-item 3. Light fixtures	\$150.00
Sub-item 4. Floors	\$300.00
Sub-item 5. Wall/Ceiling	\$400.00
Sub-item 6. Closet doors	\$50.00
Sub-item 7. Cabinets	\$250.00
<b>TOTAL</b>	<b>\$1,340.00</b>

The landlord submitted a document in evidence titled “Security Deposit Deduction Certificate” (the “deduction certificate”). The tenant stated that she had to sign the document but did not agree with the deductions. The deduction certificate does not provide for any area for the tenant not to agree to the multiples charges listed by the landlord. The tenant does agree with two of the items listed on the deduction certificate which are the two items described in the settled agreement above.

Item #3, sub-item 1 was resolved by way of a settlement agreement between the parties. Regarding sub-items #2 through #7, the agents confirmed that the landlord did not submit any receipts in support of these items being claimed. The tenant did not agree to sub-items #2 through #7.

Regarding item #4, the landlord has claimed \$52.50 for exterior repairs. The agents confirmed that the landlord did not submit any receipts in support of this portion of the landlord’s claim. The tenant did not agree to this portion of the landlord’s claim.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### *Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In the matter before me, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Regarding the deduction certificate submitted in evidence by the landlord, the landlord did not provide an area in that document for the tenant to disagree with any of the multiple charges listed. As a result, I find that the only agreement between the parties as to the deductions were those agreed to by way of a mutually settled agreement described above, comprised of \$709.00 for unpaid March 2014 rent, plus \$150.00 for window damage. I will now consider the remainder of the landlord's monetary claim.

**Item 2** – The landlord originally claimed \$1,890.00 for cleaning costs and reduced that amount to \$1,800.00 during the hearing as that was the amount listed for the tenant in the deduction certificate. Although the tenant claims she was told by an agent for the landlord that she did not have to clean the rental unit, the tenant failed to submit any evidence to support her testimony. Furthermore, the agent for landlord denied saying to the tenant that she did not have to clean the rental unit at the end of the tenancy.

Section 37 of the *Act* applies and states:

**Leaving the rental unit at the end of a tenancy**

**37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

**[my emphasis added]**

Given the above, and taking into account that I am unable to enforce a disputed verbal agreement between the parties related to cleaning of the rental unit at the end of the tenancy, **I find** that the tenant breached section 37 of the *Act* by failing to leave the rental unit in a reasonably clean condition at the end of the tenancy as required by the *Act*. Therefore, after considering the landlord's photo evidence, the letter submitted in evidence by witness "NO", the cleaning receipt and the condition inspection report submitted in evidence, **I find** the landlord has met the burden of proof to support this portion of their claim for cleaning costs. As a result, **I grant** the landlord **\$1,800.00**, the amended amount being claimed during the hearing as that was the amount listed on the deduction certificate presented to the tenant and is the amount in which the tenant had the right to rely on.

**Remainder of item 3 and item 4** – I have combined these items as both items related to damages, and the landlord failed to submit receipts to support the values for this portion of their monetary claim. **I find** the landlord has failed to meet part three of the four-part test described above by failing to provide receipts supporting the value of the claim being made. Therefore, **I dismiss** the remainder of item 3 and all of item 4 of the landlord's claim due to insufficient evidence, **without leave to reapply**.

As described above, the parties mutually agreed for the tenant to compensate the landlord the amount of **\$859.00**, by way of a settlement agreement, comprised of \$709.00 for unpaid March 2014 rent (item 1), plus \$150.00 for damage to the window (portion of item 3). **I ORDER** the parties to comply with the terms of their mutually settled agreement pursuant to section 63 of the *Act*.

As the landlord's claim had merit, **I grant** the landlord the recovery of the **\$50.00** filing fee.

**Monetary order** – Based on the above, **I find** the landlord has established a total monetary claim of **\$2,709.00** comprised of a settlement agreement regarding item 1, and the window damage portion of item 3, in the amount of \$859.00, \$1,800.00 for item 2, plus the filing fee of \$50.00. I have dismissed the remainder of item 3, and all of item 4.

The landlord continues to hold the tenant's \$282.26 security deposit, which is comprised of a \$240.00 security deposit, plus \$42.26 in interest. I find the landlord filed their application within 15 days of the end of tenancy date in accordance with section 38 of the *Act*.

**I ORDER** the landlord to retain the tenant's full security deposit including interest of \$282.26 in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$2,426.74** owing by the tenant to the landlord. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The parties have been ordered to comply with the terms of their settlement agreement as described above, which was made in accordance with section 63 of the *Act*.

The landlord has established a total monetary claim of \$2,709.00 comprised of a settlement agreement regarding item 1, and a portion of item 3, in the amount of \$859.00, \$1,800.00 for item 2, plus the filing fee of \$50.00. I have dismissed the remainder of item 3, and all of item 4.

The landlord has been ordered to retain the tenant's full security deposit including interest of \$282.26 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$2,426.74 owing by the tenant to the landlord. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 14, 2014

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Residential Tenancy Branch

